HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. V.SEETHAPATHY

Writ Appeal No. 874 of 2006

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Between:

Dayakam Jalaiah and three others

……Appellants

And

The Joint Collector,
Nizamabad District
and three others

……Respondents

:: JUDGMENT ::

Counsel for the Appellants : Sri B.Vijaysen Reddy

Counsel for the Respondents : Government Pleader for Revenue

August 21, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 13-03-2006 passed in WPMP No.5527 of 2006 in Writ Petition No.4395 of 2006, whereby the learned Single Judge indirectly declined the appellants prayer for restraining the respondents from interfering with their peaceful possession and enjoyment over land measuring Ac.1-35 guntas comprised in Survey No.752 situated at Pandutarfa Village, Bodhan Mandal, Nizamabad District.

The principal ground on which the appellants have questioned the order under challenge is that while refusing to protect their possession, the learned Single Judge overlooked the fact that they and their predecessors were in possession of the land in question for last more than 37 years as on the date of initiation of action for declaring the disputed property as wakf property and even on the date of filing of the writ petition, the appellants were very much in possession.

We have heard learned counsel for the parties and perused the record. Ordinarily, the Division Bench is extremely reluctant to interfere with the discretion exercised by the learned Single Judge at the interlocutory stage of the proceedings of the writ petition filed under Article 226 of the Constitution of India, but having regard to the facts of this case we are inclined to entertain the prayer of the appellants for restraining the respondents from interfering with their peaceful possession. A cursory reading of the documents filed with the writ petition shows that the land in question had been sold to the predecessors of the appellants by Khaja Kaleeluddin and Khaja Jaleeluddin in the year 1965 and the same stands entered in the revenue records in their names. It is also borne out from the record that proceedings for declaring the disputed land as wakf property were

initiated for the first time some time in 2003 i.e., after a gap of 38 years.

The question whether the transaction entered into between the predecessors of the appellants and Khaja Kaleeluddin and Khaja Jaleeluddin is sanctioned by law and whether they are entitled to lawfully retain possession of the land on the basis of the purchase made in 1965 will be adjudicated by the learned Single Judge at the time of final decision of the writ petition. Therefore, we refrain from expressing any opinion on the legality or otherwise of the sale transaction. However, this much is clear that the predecessors of the appellants were in possession of the land since 1965 and at present, the appellants are occupying the same. If the respondents are not restraining from dispossessing the appellants during the pendency of the writ petition, there is every likelihood of the prayer made in the writ petition becoming infructuous. Moreover, in our considered view, the possession of the predecessors of the appellants and the appellants for last more than 40 years (as on date) justifies in order of injunction to restrain the respondents from interfering with their possession.

In the result, the appeal is allowed and the respondents are restrained from interfering with the appellants' possession over the land in question.

While granting relief to the appellants in the manner indicated above, we make it clear that the Wakf Board, Andhra Pradesh shall be free to apply for its impleadment as a party to the writ petition. It will also be open to the official respondents to raise an objection to the maintainability of the writ petition on the ground of non-impleadment of Wakf Board, Andhra Pradesh as party respondent.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY,J

21-08-2006
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